

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON APPROPRIATIONS**

**Call to Order:** By **CHAIRMAN STEVE VICK**, on March 12, 2001 at 8:00 A.M., in Room 102 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Steve Vick, Chairman (R)  
Rep. Dave Lewis, Vice Chairman (R)  
Rep. Matt McCann, Vice Chairman (D)  
Rep. John Brueggeman (R)  
Rep. Rosalie (Rosie) Buzzas (D)  
Rep. Tim Callahan (D)  
Rep. Edith Clark (R)  
Rep. Bob Davies (R)  
Rep. Stanley Fisher (R)  
Rep. Dick Haines (R)  
Rep. Joey Jayne (D)  
Rep. Dave Kasten (R)  
Rep. Christine Kaufmann (D)  
Rep. Monica Lindeen (D)  
Rep. Jeff Pattison (R)  
Rep. Art Peterson (R)  
Rep. Joe Tropila (D)  
Rep. John Witt (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Paula Broadhurst, Committee Secretary  
Taryn Purdy, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 13, 3/9/01, HB 62, 3/9/01  
HB 397, 3/9/01, HB 7, 3/9/01  
HB 572, 3/9/01

Executive Action: HB 7



**Note from Transcription Secretary: The first part of meeting was not tape recorded and minutes were taken from hand written notes.**

**HEARING ON HB 13**

**Sponsor:** REP. DAVE LEWIS, HD 55, HELENA

**Proponents:** Mike Foster, Department of Labor  
John McEwen, Department of Administration  
Terry Minnow, MEA-MFT  
Tom Schneider, Montana Employees Association  
Dick Crofts, Commissioner of Higher Education  
Jeff Gamble, Montana State University President  
Lois Mueller, (Unknown participant)  
Dustin Stewart, Associated Students-MSU, Student  
Cathy Kringo, Director Human Resources University  
of Montana at Missoula  
Sarah Cobler, Associated Students UM, Student  
Cath McChestin, Teachers' Aide

**Opponents:** None

**Opening Statement by Sponsor:**

**REP. DAVE LEWIS, HD 55, HELENA** said HB 13 is an act providing for pay and benefits for state employees in the statewide, teachers', and blue collar pay plans, revising the department's authority to develop alternative pay plans; eliminating the statutory pay schedule for teachers; increasing the state contribution to the employee group benefits program, appropriating funds to implement pay and benefit revisions.

**Proponents' Testimony:**

**Mike Foster, Department of Labor** said Governor Martz supported this bill. The pay raise enhanced their projects. State employees are 16% behind in pay compared to other Montana employees.

**John McEwen, Department of Administration** handed out "Summary of Key Elements & Relevant Background Information" **EXHIBIT (aph56a01)** and went through the bill section by section. He said the bill represented their settlement with the state's four largest unions. Section 1 is the purpose and intent of the bill. Section 2 is procedures for using pay schedules, employees would receive pay increases up to 4% on their anniversary date. Section 3 is statewide pay schedules. Section 4 is the teachers' pay schedule and the pay raise had not been determined for teachers. Section 5 is blue collar pay schedules. Section 6 is contributions. The



employer share of health insurance increases by \$30 a month beginning January 2002 and by \$41 a month beginning January 2003. Section 7 is appropriations and includes a contingency fund of \$1 million general fund and \$3 million other funds. The office of budget and program planning (OBPP) distributed funds to agencies when personnel vacancies do not occur, retirement costs exceed agencies' resources, or other contingencies arise. He noted that retirement numbers have increased to 20% and agencies are hard pressed to fill vacancies, with a 15% increase in employee turn over. Salaries used to be above average but have fallen behind.

**Terry Minnow, MEA-MFT** said she greatly supports the bill. They support the deaf, blind, and employees, teachers and students at the universities. They also support both of the amendments that were being added.

**Tom Schneider, Montana Public Employees Association** said they were part of the negotiations for this bill. There was a 7% increase in health coverage.

**Dick Crofts, Commissioner of Higher Education** said they were experiencing problems finding staff at the university, especially carpenters and janitors. He asked the legislature to return to the funding mechanism that was used in 1991 when 70% came from the general fund.

**Geoff Gamble, President of Montana State University** said they are having a hard time getting employees. They have a high turn over and lose employees to local jobs because they often pay more. In 1996 they had 200 positions; now they have 320 positions. Applicants have decreased.

**Lois Mueller** said they supported the bill. They have seen an increase in recruitments. Their existing employees have had to take on a heavier work load.

**Note from Transcribing Secretary: Dustin Stewart's testimony can be found at the very end of Tape 2, side A. Previous testimonies have been recorded over in error.**

**Dustin Stewart, Associated Students-Montana State University** said he struggled with his testimony. It is difficult for a student to support a bill that mandates a 4% increase in tuition each year of the biennium. He said he supported this bill anyway. It is not a question of whether the employees of MSU in Bozeman, Great Falls or at Tech deserve pay increases, because they do. Tuition is increasing rapidly, and if it keeps at this pace, soon students won't be able to enroll. Something must be done to change that. He emphasized that students have always been very



supportive of their faculty and the rate of pay they receive. They have never opposed the state pay plan because of the fine job they do teaching the students. In addition to that, in many years the students have given an increase to the faculty members above and beyond the pay plan, as much as 3% and 4%, funded just with tuition because they understand the need for the faculty members. Over the last eight years, tuition had increased 102%. Affordability and access is now in jeopardy because of tuition. Funding the state pay plan at only 50% is going to be a contributing factor in future years as to how many students will be able to afford to attend. Faculty cares about those that will have to drop out and take another job because they can't afford to pay their way through. Or those who will take out a loan to finance the \$17,000 and pay it off when they leave. There needs to be a balance between affordability and quality in the University system, and that is why he knew he must speak in support of the state pay plan. They do not oppose the state pay plan even though tuition will increase 4% per year. They support the plan, but would also like to see an increase in state funding of the pay plan. There is no other way the students will be able to reach the objective of affordability and access for all students while maintaining the quality of the University system.

**Cathy Kringo, Director of Human Resources at the University of Montana in Missoula** said she was here as a staff advocate because the committee hasn't heard much about the need for adequate salaries for staff in the university system. Staff are the conduits between students and faculty. She said the duties of staff include dining and kitchen help, janitors, snow removal and maintenance. When staff leaves for higher paying jobs elsewhere, the work is just added to other staff. They work hard and donate their time in many cases. She advocated an increase in student tuition and reallocating funding. She asked the legislators to support staff as they are an important part of the university.

**Sarah Cobler, ASUM, student** said employees noticed a different trend since 1991 and now the state funds less of the pay plan.

**Cath McChestin, teachers' aide** said staff pay falls short of the normal pay ranging from \$6.75 to \$8.87 instead of \$9.20 where it should be. Most staff had to work two jobs just to make ends meet. She read testimony from a friend in support of the bill.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**REP. JAYNE** asked how the governor's office can support pay increases when other places are also in need. **REP. LEWIS** said



they dealt with that in committee. It is a matter of how much money you have. We already gave them a larger increase in HB 2.

**REP. JAYNE** asked if care of the less fortunate shouldn't be higher. **REP. LEWIS** said he couldn't say who is more important.

**REP. KASTEN** asked if the present pay schedule is 4% to 6% behind. **John McEwen** said yes, in the 4% to 6% range.

**REP. FISHER** said there is \$4 million in the bill as a contingency fund for retirements. When he looked at the bill last week, it would take \$76 million to pay for retirements. What is being done with this? **John McEwen** said yes, it had been there for years. The retirements had a lot of sick leave added up. **REP. FISHER** asked about vacancy positions that are open until they are paid off. How do we get out from under this? **John McEwen** said they could set up a fund to pay out that liability.

**REP. MCCANN** asked **Cathy Kringo** what the average salary is for the teaching staff. **Cathy Kringo** said she did not know, salaries range between \$25,000 and \$53,140. **REP. MCCANN** said it is reasonable to believe they are on the upper end. These are higher than what we were talking about. **Unknown person** responded \$50,000 to \$70,000. **REP. MCCANN** said to take the average, then average their salary to get \$25,000 most of the salaries would have to be higher to make the average be \$25,000. He said he would like to find out how many are on the upper end of the range and how many are on the lower end. **Cathy Kringo** said there were 53 on the low end; a large majority of staff is at the low range.

**CHAIRMAN VICK** said they discussed how much of a raise to give last session. **Cathy Kringo** said the average increase was 3% or 20 cents per hour.

**CHAIRMAN VICK** said there is a \$3 million increase, but there are more students. A 1.5% increase would do the job. Why do they need 4% raise? Is it 4% per year or 4% per biennium? **John McEwen** said it is a 4% raise each year of the biennium and to refer to exhibit 1.

**REP. PETERSON** asked for clarification of how much the raise and the benefits are. **John McEwen** said the pay raise is 4%. The benefits are \$30 for the first year and \$41 the second year.

**Note from Transcribing Secretary: The following testimony was taped correctly and starts midway through Dick Croft's testimony.**

*{Tape : 1; Side : A; Approx. Time Counter : 0}*



**Dick Croft** spoke. It would generate about \$900,000. If you do 1% the first year and 1% the second year, the 1% in the second year builds on the 1% the first year and that is how you get to the 2.7%: \$900,000 and 1.8%. In 2002 the other funds column for the university system in exhibit 1 is \$3 million. If you did it on an annual basis, you would need to divide that by \$900,000 and you would have 3% tuition increase. When it is 7.7% in the second year, you would again have to divide that by \$900,000 and you would be at 8.5%. The second year builds on the first.

**REP. LINDEEN** said it appeared this bill would have \$30 million effect on the general fund. Based on the situation we are in, what are your thoughts on that. **REP. LEWIS** said this money is in the governor's base budget and is about \$31 million.

**REP. MCCANN** said it is apparent that because we are not putting more money into higher education student tuition rates will have to be raised. If the legislature were to cough up half the amount of what the request is here, are you going to cap the tuition for the upcoming biennium to reflect that? **Dick Crofts** said he had spent some time last week talking about the budget obligations they face in the next biennium. Those obligations exceed the amount of general fund currently in HB 2 by over \$25 million. That includes \$10 million for this pay plan and about \$7.2 million for the cost of annualizing the next pay plan. If the legislature added additional general fund they will subtract that from the amount of tuition increases that will be required in the next biennium. He said he would be nervous about the meaning of the question about "capping" tuition increases. We are looking at significant tuition increases. The cost of the two pay plans provided an obligation of \$17 million, and any additional fund would be subtracted from that and would decrease the amount of tuition increase they have to look at. It would not permit holding tuition at its current level.

**Closing by Sponsor:**

**REP. LEWIS** said this bill does not solve all the problems as far as personnel management in state government. This is a good faith effort to spend as much money as they could afford to make a step toward addressing some of the problems we have in recruitment and retention. The director of the department of transportation told him that for the first time in recorded history the department was unable to hire only one engineer out of the graduating class at MSU. Our beginning salary is \$28,000 and we are so far off the market we didn't even get one person out of that graduating class. We need a lot of skills in state government and we are having trouble being able to recruit. We are going to have a lot of trouble retaining in the future. This



is a step we can afford to make, it is a fair attempt to address some of the problems but we can't solve them all with this bill.

**HEARING ON HB 62**

**Sponsor:** REP. JEFF MANGAN, HD 45, GREAT FALLS

**Proponents:** Joe Connell, Chief Probation Officer  
Clark Kelly, Probation Officer  
Dan Foley, Butte Silver Bow Youth Court  
Dick Boutilier, Chief Probation Officer  
Ernest Butts, Chief Probation Officer  
Larry Grant, Chief Probation Officer  
Barbara Monaco, Chief Probation Officer  
Gordon Morris, Montana Association Counties  
Sandy Oitzinger, MT Juvenile Probation Officers  
Association

**Opponents:** None

**Opening Statement by Sponsor:**

REP. JEFF MANGAN, HD 45, GREAT FALLS said HB 62 will revise the salary structure for chief and deputy juvenile probation officers. It is brought at the request of the subcommittee on local government in the education interim committee. These salaries are set in statute, so requests for changes to salary structure must come from the legislature. Section 1 is submission deadlines for budgeting. Section 2 contained criteria for chief juvenile probation officer's salary and expenses. It The salary is based on a percentage of the minimum and maximum of a district court judge's salary. New language in this bill allowed a chief juvenile probation officer to transfer their annual 1% longevity allowance to any new positions he may take in a different county or judicial district. The most important part of this bill is page 4, lines 12-17 where it states that 50% of the juvenile probation officer's salary is paid by counties and 50% is paid from the state general fund and is administered through the office of the supreme court. Section 3 addressed deputy juvenile probation officer's salaries which also relate to a percentage of the minimum and maximum of a district court judge's salary depending on years of experience. In this case, the state will not be picking up half of the deputy's salary, but they will pick up salary increases that are found in this bill. He gave the years of experience that the chiefs have in the state. 14 out of 22 districts have 10+ years of experience, 9 have 20+ years. This shows a commitment to what they do and they do a good job. This bill is about treating them fairly and in accordance with the salaries of private business and other



states. We will have a hard time filling these slots with the current salary structure as it is, and many of these people will be eligible to retire soon.

**Proponents' Testimony:**

**Joe Connell, Chief Probation Officer** for fifth Judicial District. He said he was one of those who had a decrease in salary because of a transfer in districts but did not lose his longevity because he had not been back in service to youth court long enough. He had been involved in this process since the 1995 session. Their goal has been to come up with a fair system for all probation officers across the state and find funding relief for counties. Salaries in rural areas especially have been kept very low.

**Clark Kelly, Deputy Juvenile Probation Officer** for 17<sup>th</sup> Judicial District in Malta said they are one of the first major stepping stones in preventing future juvenile and adult criminal behavior. Caseloads require far more than 40 hours per week. This bill provides future compensation that better reflects the responsibility of these positions. Many officers have been forced to take additional employment in order to provide for their families. Work with juvenile delinquents reduces the costs of the present out of control criminal justice system.

**Dan Foley, Deputy Juvenile Probation Officer for 2<sup>nd</sup> Judicial District in Silver Bow County** asked for support of this bill. This bill addresses the disparity in salaries across the state. Starting salaries vary as much as \$8,000. This is not fair because the responsibility is the same regardless of the location. The transferability of the longevity allowance is very appealing to officers who have not settled into communities and are looking for promotions. The raise in salary this bill provided is well deserved. The job is very demanding, very frustrating, very complex, and increasingly more dangerous.

**Dick Boutilier, Chief Juvenile Probation Officer** from 8<sup>th</sup> Judicial District, Cascade County said many things have changed since he was hired in 1973. Juvenile behavior had become much worse, kids are starting at a younger age, and they are harder to deal with. This bill offered some stability for probation officers statewide to keep doing what they are presently.

**Ernest Butts, Chief Juvenile Probation Officer** in Miles City said he had 30 years in last January. He said he would be retiring soon, and he supported the bill.

**{Tape : 1; Side : B;}**



**Larry Grant, Deputy Juvenile Probation Officer** from Miles City said he would be retiring in the next year or two. Stability and fairness in salary is necessary to be competitive and get and retain good employees.

**Barbara Monaco, Chief Juvenile Probation Officer** of 20<sup>th</sup> Judicial District had been there since 1986. She had worked hard to put this bill together. Probation officers are the front line of defense in working with problem kids. They are the ones who are called by law enforcement officers. School professionals and parents look to them for support, guidance and understanding of what is going on with adolescents. They are the eyes and ears of the court. Their goal is whatever is the best interest of the child. They represent to the court and to public officials what needs to be, what should be done, and what is most effective in dealing with the children. This bill will pay an adequate salary for probation officers in the state. Five probation officers have been lost in the 20<sup>th</sup> Judicial District in the past seven years. Four of them left because the pay was not enough to support their families. An important part of this bill is help with funding for the counties. She urged support of HB 62.

**Gordon Morris, Montana Association of Counties** supported HB 62. Everything that was said at the hearing of HB 13 is appropriate here. As officers of the state district court, this is an obligation of the state. We are asking you to pick up half of that responsibility in the case of the chiefs, and the ongoing increases relative to the deputies. He said it is appropriate and he hoped for approval of this bill.

**Sandy Oitzinger, Montana Juvenile Probation Officers Association** emphasized state participation in probation officer's salaries. Because the court dealt with constitutional issues, having salaries depend upon local tax revenues creates inequities in the system which would be corrected by this bill with the infusion of state funds. The portability issues of longevity have been discussed. She handed out a letter from Chief Carol Stratemeyer, **EXHIBIT (aph56a02)** about the portability issue.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**REP. CALLAHAN** commented that this bill would impact him as he is a Juvenile Probation Officer. He supported the bill and said he would be available for questions.

**CHAIRMAN VICK** asked if the major part of the fiscal note comes from the state assuming half of the salaries of chief juvenile



probation officers. **REP. MANGAN** said the fiscal note was created based on taking all the probation officers in the state and setting their salaries at the maximum under this bill. **CHAIRMAN VICK** asked how much of a raise this would be. **REP. MANGAN** said that currently the base salary for chief probation officers is \$24,000 - \$29,000. Current district judge's salary is around \$73,000. 50% of \$70,000 is \$35,000, so the base salary would be an increase of about \$10,000. Realizing that the majority of chief probation officers, because of years of service are already at that point every officer will not have that jump.

**REP. FISHER** clarified that the probation officer's salary would be 55% of a judge's salary for 0-5 years. Is this tied to the judge's beginning salary or to any longevity they may have? **Sandy Oitzinger** said it is the judge's base salary which is uniform throughout the state and they currently sit at \$76,000.

**REP. TROPILA** asked if judges were in for a raise in the state pay plan bill. **REP. MANGAN** said no.

**REP. LEWIS** asked if probation officers are state or county employees or what. **Sandy Oitzinger** said the answer is all of the above which explains why there is a little confusion. Probation officers serve at the pleasure of the district court judge, who is wholly compensated by the state. The budget of the counties is also controlling in their salary. It is a partnership already, except that the state isn't paying for their salaries and that is what they would like to change.

**REP. TROPILA** asked if there is a current bill to increase the judge's salaries. If it is automatic, what is it going to go to this year? **Sandy Oitzinger** said it goes to \$82,606.

**Closing by Sponsor:**

**REP. MANGAN** said everything had been said. They certainly are dedicated professionals. HB 62 not only recognized that but it set up a fair and balanced approach to paying them, because they affect every part of government. He urged support.

**HEARING ON HB 397**

**Sponsor:** **REP. VERDELL JACKSON, HD 79, KALISPELL**

**Proponents:** **Holly Franz, PPL Montana**  
**REP. STANLEY FISHER, HD 75, BIGFORK**  
**Tom Ebzery, Avista**



**Opponents:**           None

**Informational Witnesses:**           **Jack Stults, Dept of Natural  
Resources and Conservation - Water**

**Opening Statement by Sponsor:**

**REP. VERDELL JACKSON, HD 79, KALISPELL** said HB 397 is a water management plan for the Clark Fork River Basin. Every water user on this basin has a different vision. That is a central theme of this bill, which is to get those people together in a task force where they can share their vision and come up with a plan that will give us the highest and best use of that water, with a particular emphasis on conservation. Amendments were submitted after conversations with Avista, conservation districts, Trout Unlimited, etc., so this was mostly written by water users in the Clark Fork River Basin. The fiscal note reflected money that would mostly be spent in the next two years. A progress report would be submitted each session, with the final water management plan being submitted to the 2005 legislature. The governor's consensus council accepted this as a project and would be coordinating it. They would identify individuals and organizations who for the task force. Similar efforts by the consensus council have been successful in the Big Hole, Jefferson, Ruby, Blackfoot and Upper Clark Fork Basin. He said there were about 25 proponents testifying in the Ag committee on behalf of this bill: Trout Unlimited, Montana Water Resources Association, Montana Stockgrowers, Montana Farm Bureau, Montana Chamber of Commerce, Montana Wood Products Association, Montana Logging Association, WIFE, Flathead Conservation District, Flathead Mint Growers, Flint Creek Irrigators, Avista, PPL, LLC and various farmers and ranchers that use water. Confederated Salish and Kootenai Tribe testified as information witness in the hearing and expressed concern about going forward with basin planning while negotiating their water compact with the state. Subsequently they have said they oppose it for that reason and they also thought if there was money for this it should go to the water compact commission so they could do their job faster.

**{Tape : 2; Side : A}** An amendment mentioning the tribe will cover their concern. He did not feel this planning process will inhibit their negotiation with the state and would probably help. The tribe indicated they will most likely participate in order to protect their interests. **Jane Hammon** from the Governor's office, **Jack Stults**, DNRC and **Holly Franz**, PPL are available for questions. We need the plan because of water conservation concerns and they want to work on field efficiencies. Sprinkler systems cut water use by 17-20% and they need to encourage conversion to sprinkler use. There are concerns about shortages and plans need to be made such as scheduling watering, and the



possibility of using alternative water when a stream is overused during a dry year. The second thing is restriction or closure of tributaries in terms of new irrigation rights. Many of these things will be identified in this process. They can petition to close or restrict these and don't need legislation. The third thing is decisions made regarding the water will be fair, appropriate and easier to accept when the approach is from the bottom up. The fourth thing is Avista. They are concerned about a significant impact on their water supply in generating electricity. Their alternative to this plan is to force a permanent closure of the basin to new irrigation rights and/or issue a call on the 7,800 junior users. 1) This needs to be done now because the best solution to problems is made when there is not a crisis or a lawsuit. 2) Business as usual increased the potential for conflict and made problems more difficult to solve. 3) The highest and best use of the water will result only when there is compromise among the users. Compromises are easier to accept when you understand the vision of the other water users. 4) There is a possibility we could lose our vision forever if we don't do this in a timely manner. Section 1 of the bill lists four things the governor's consensus council will be doing. This is not a study, and the process is extremely important. Page 2, line 13 states what the task force will do in developing their plan. Very little new data will be created as there is a lot of data not being used and not available. Page 2, line 21-23 stated the task force shall prepare a water management plan for the Clark Fork River basin and must identify options to protect the security of water rights and provide for the orderly development and conservation of water in the future. The goal is general because people were concerned they would not be able to use their water. Everyone is thinking about the security of the water they now use and the possibility to be able to tweak their irrigation right in the future. Page 3, line 8 was put on at Avista's request. This statement clarified that the water right is junior to the other 26,000 users in the basin. Amendment HB039702, **EXHIBIT (aph56a03)**, concerned the Flathead Indian reservation which is about 1.2 million acres, a large part of the basin. This amendment would be added to make sure the tribe knew they were specifically being invited to participate. Item one covered page 1, line 25 and would insert the word "tribal". Item two covered page 2, line 4 and would insert "and including the Flathead Indian reservation". He offered a conceptual amendment that came from **Jane Hammon** of the Governor's office for page 3, line 4 to strike October 31 and add September 15. The reason being that the report must be at the Governor's office for review by that date.



**Proponents' Testimony:**

**Holly Franz, PPL Montana** said basin planning usually occurred on a watershed basis and would cover the Clark Fork River and all its tributaries, a very large area that covers most of western Montana except for some of Fisher Creek area. Local interests are represented by knowledgeable local farmers, ranchers, anglers, recreationalists, and industry. They have the knowledge and the power to make things happen outside of government, because they usually own a large part of the water rights. It is the water right owners themselves that enforce their water rights, the government just sets the rules. She handed out "HB 397 Clark Fork River Basin Task Force", **EXHIBIT (aph56a04)**. She said basin planning watershed groups do not have any legal authority. What they do is get all the groups together to sit down and understand each other's issues and try to work toward cooperative solutions. The reason for doing this now is Avista. At risk is tributary storage, because there are a lot of senior water rights. A lot of junior users have built storage and they are at risk because Avista is storing at the same time they are storing. If Avista put out a call they could stop that storage from happening. The other thing is that tributary development came first, and there are many main stem junior users that are at risk. Avista negotiated their FERK license through cooperation and negotiated a living license. They were able to come to agreement with every one on every issue - fish, water quality, etc., but they could not do it with water rights. The Governor tried to get an agreement, and now the locals want to try it. They are the ones at risk, and they are the ones that can make it work. Planning for the entire basin is important because for this opportunity, Avista affects every single tributary. They have no legal authority to affect existing water rights. The tribe's water right is one of the most senior water rights in the basin and it can not be affected by junior rights. Junior rights could be affected, and the best thing would be that the tribe got involved. The only way this planning effort could affect the Flathead Indian reservation is if the tribe got involved because 1) Currently there is a closure as a result of litigation on the Flathead tribe. You cannot get a new water right permit regardless of what the bill does. 2) A big issue is the administration of water rights on the reservation itself. That is a federal legal issue that will not be determined by this group or this legislature or even the state. Why do we need the money if everyone is ready to go and we have lots of volunteers? We need the money to pay someone to get everyone organized, someone to send out the mailing, someone to get the phone list together, we need a facilitator that encourages everyone to listen and understand where others are coming from. She urged support of the bill.



**REP. STANLEY FISHER, HD 75, BIGFORK** spoke favorably. Another big concern is that this water supply going to Avista and the lower Columbia is going to be looked at by the federal government one of these days. Those people in Washington, Oregon and Idaho have more political clout in Washington D.C. than we do, and they won't hesitate to use it. Tribes down the river have to protect the salmon, we not only have an electrical generation problem and the demand for the water there, but also for the fisheries. Bonneville Power said 10 years ago they had a \$5 million budget to protect the fisheries up and down the Columbia and today it is \$450 million. This is a serious thing and we need to take a serious look at this bill.

**Tom Ebzery, representing Avista** from Billings said 487 was a collaborative effort, a two year moratorium so the parties could discuss these issues during the FERK re-licensing period for Avista. They began negotiations and the intent was that FERK would attach a condition to either subordinate their water rights or do something with them. Avista began negotiations with the state, FERK issued the re-license, the so called living license application, they continued to express interest in negotiating with the state but they had no interest in doing that and said it is better to do a collaboration. That would be accomplished through this bill and they would be happy to participate in that. They support the desire to remove the moratorium and there is language in the bill to notify the junior users that there are senior appropriators.

**Opponents' Testimony:** None

**Informational Witnesses:**

**Jack Stults, Department of Natural Resources and Conservation - Division Administrator of Water Resources** said he is available to answer questions and handed out written testimony, **EXHIBIT (aph56a05)** "Testimony Before House Agriculture Committee by Jack Stults Water Resources Division, DNRC, HB 397, 2/8/01".

**Questions from Committee Members and Responses:**

**REP. BUZZAS** asked what the potential is for getting additional private funding from the various groups that are going to be participating in the planning; Montana Community Foundation comes to mind. Have you looked into those possibilities? **REP. JACKSON** said the money also needs to be spent on making this a quality plan and there is a possibility we would want to contract with a private hydrologist. They don't know how many task force members they will have, about 12-15, but they want to keep it as small as possible because of the cost. It is not in the bill because the



consensus council had to work that out. He talked to many of the organizations that are involved in this and they have indicated the possibility they would contribute. Individual ranchers and farmers and others coming to this won't be able to contribute much of their own money, but if they have someone from the Stock growers or another group like that, there is a possibility, rather than from the individual.

**{Tape : 2; Side : B;}**

**REP. WITT** asked about the bigger picture of what is happening in the Columbia basin and their management plan. How do you think that impacts what is going on here and is this all for naught anyway? **Holly Franz** said there are a lot of different issues out there. One of them was **REP. FISHER's** concern about an attempt to take our Montana water. Another is the Avista concern, what to do if there is a shortage. These are some specific Montana issues that we can address, realizing it is all one big basin and we can be impacted by down stream issues too. **REP. WITT** said his concern is the federal government and special interests in what is happening on the Columbia and the scientific community. Is addressing that part of the plan? **Holly Franz** said the way Hungry Horse Dam is operated influenced the entire basin. The Northwest Coordinating Agreement between all the dams in the Pacific northwest, including the privately owned dams is going to have to be considered in the way the river is managed. Not all problems will be solved this way, but some will be helped.

**REP. LINDEEN** asked if there would be input from other Montanans like the governor's TAC, consumer council, etc. **Holly Franz** said these groups took on a life of their own and that is why **REP. JACKSON** didn't want to say who would be on the task force and wanted the consensus council to pick them.

**REP. LINDEEN** asked what would happen if this group came up with their plan and the Salish Kootenai negotiate an agreement, obviously the agreement would have precedence so it is very important the tribe participated in this. **Holly Franz** said there is nothing this group can do to affect the priority date of the Salish Kootenai or the way they choose to negotiate administration with the state. When they reach a compact, they will come to the legislature to ratify it and it will become law. It will control any voluntary efforts, so certainly it will trump any effort from this group.

**REP. KAUFMANN** asked if this commission would prevent any possible call on the junior users by Avista. **Holly Franz** said no, but Avista indicated its willingness to sit down with people in the basin and work out a sharing of some shortages. Their concern is



about the situation getting worse. With each new user, their water right is getting further deteriorated, but they are willing to do it. That is a corporate offer, an opportunity that the state should not let go. That is a big incentive to do it now.

**REP. KAUFMANN** asked about language in section 1 of the bill designating an appropriate entity to convene and coordinate a task force. **Holly Franz** said the governor's consensus council is not a legal entity, it is not defined in statute, it is not referred to in statute. While they are not named, that is the entity being referred to.

**REP. MCCANN** asked about the termination date. Would it be appropriate to close the window somewhat and ask the participants to fund this program. **Holly Franz** said if that is what it would take then that is appropriate. What often happens is there is government start up money, then once the momentum starts they tend to be able to bring in private dollars and grant dollars. If this committee either does not fund the bill or reduced the funding, the local entities want this to go forward and they will do everything they can to find the money to accomplish it. **REP. MCCANN** asked if the private contribution is in kind or is actual cash. **Holly Franz** said what is in the fiscal note is actual cash. Organizations pay someone to attend, and in that way it is in kind. She did not think it is reflected in the fiscal note.

**REP. LEWIS** said if this bill passed, the conference committee would be presented with an amendment from the governor's office and they would have the option of how they fund it. The bill can pass along and the funding is taken care of, or not taken care of by a conference committee at the end of the session.

**REP. FISHER** addressed concerns about the tribe's water rights. Once they are established, the tribe's water rights will become a debt against Montana's water rights with the people down stream. There are also tribes down stream that use fishing as a portion of it. It is not just a case of the Montana tribe being involved. If down stream users can draw enough water rights either through federal or their own litigation, it will go against our rights to take water out of the headwaters of these rivers. That concern is what we need to address.

**REP. JAYNE** asked about the management plan. Isn't it more effective for a plan to make sure the water rights are quantified because there are decision making activities that have to be made. If you have an entity where you don't know the status of their water right, it is harder to develop the management plan. Please comment. **Holly Franz** said that would be the preferable situation. There are large areas of Montana that are un-



adjudicated. Water rights on the Big Hole have never been adjudicated, even without knowing exactly what their water rights were, people agreed to cut back. It was not defined, it was not required. It would be helpful to know that information, but some things could be accomplished without it. **REP. JAYNE** asked if she was aware the tribes had issued a statement paper opposing this bill. **Holly Franz** said she had a copy of the statement and that is why **REP. JACKSON** put forth his amendment for them to participate in all phases of planning if they choose. **REP. JAYNE** said if you don't get funding by the state and end up getting private funding, why would you need to codify this task force. **Holly Franz** said the reason is that codifying this brings momentum to the effort, it puts an organizational push behind it, it gives more legitimization. This can occur without a statute, but it would be helpful to have the statute in this circumstance because this is such a large basin.

**Closing by Sponsor:**

**REP. JACKSON** said the Montana consensus council had no money in their budget to do anything on this. The only way they could put any staff on it to even get it started would be to have some money to do that. At this time, he did not know of any organization that would have the means to get it started. He met with **Fred Matt, Chief of Salish Kootenai Indian tribe** and they talked in detail. Their priority is the water compact and they don't want any focus taken off that. They felt the planning outlined in this bill was just as appropriate for the reservation as it was for the rest of the basin. There was a lot of good to be gotten out of it.

**HEARING ON HB 7**

**Sponsor:** **REP. MATT MCCANN, HD 92, HARLEM**

**Proponents:** **John Tubbs, Dept. Natural Resources & Conservation**  
**Gail Abercrombie, Montana Petroleum Association**  
**Tom Ebzery, CMS Oil & Gas**  
**Holly Franz, Redstone Company**

**Opponents:** **None**

**Opening Statement by Sponsor:**

**REP. MATT MCCANN, HD 92, HARLEM** said HB 7 appropriated money to the department of natural resources and conservation for grants to designated projects under the reclamation and development grants program, prioritizing grants and amounts, and establishing conditions for grants. The purpose was to repair, reclaim, and



mitigate environmental damage to public resources from non renewable resource extraction. \$4.1 million is going into projects throughout Montana. Page two gives descriptions of the projects. There had been a move in HB 7 to address the Zortman Landusky mining reclamation project and Amendment HB00702

**EXHIBIT (aph56a06)** refers to how the committee moved the money around.

**Proponents' Testimony:**

**John Tubbs, Department of Natural Resources & Conservation (DNRC)** said he is responsible for administering the reclamation and development grants program (RDGP). He handed out "Reclamation and Development Grants Program, HB 7" **EXHIBIT (aph56a07)**. They are able to fund projects through #18, Liberty County. The other four projects are not in the money but would receive funds if a higher priority grant did not use their grant dollars. Because of the need to get started on the Zortman Landusky mine site, the Department of Environmental Quality (DEQ) worked with the governor's office and DNRC and recommended changes in the priority so they could focus on that project. This is the reclamation program everyone talks about. This is the vehicle the legislature put in place to reclaim abandoned mines, plug abandoned wells, etc. #16, #17, and #18 projects represent a cost share program with active oil well producers in those counties to plug shut in wells that are not producing any oil and are sitting on the landscape as environmental hazards and long term liabilities for the state, but have current operators over the top of them. A cost share of 75 cents a foot is provided to get those wells plugged. This is about 50% cost share with the well owner. The reason this is a great idea is that it will cost those landowners and operators significantly less to plug those wells than if they were eventually orphaned and it became state responsibility to plug them. We are putting money to good work.

**Gail Abercrombie, Montana Petroleum Association** said this is what the resource indemnity trust fund interest is meant to do. The oil and gas industry, the coal industry and others have paid into it for that purpose. It included partial funding for coal bed methane EIS which will also be a statewide programmatic EIS, plus those plugging programs that are on tap. The cost sharing program is working for those counties to get wells plugged, abandoned and reclaimed.

**Tom Ebzery, CMS Oil and Gas** referred to page 3, lines 7-8, the \$250,000 for the coalbed methane EIS. He said everything is at a standstill because this is a joint effort between federal and state. This funding is an indispensable part of the joint effort and they support it.



**Holly Franz, Redstone Gas Partners** a subsidiary of MDU (Montana Dakota Utilities) said she echoed the comments of **Tom Ebzery**.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**REP. LEWIS** asked about the Fort Shaw Weed Shop contamination remediation. Why are we cleaning it up for them? **John Tubbs** said the weed shop previously used a now hazardous contaminant version of 2-4-D which lies in the soil inside of a warehouse shop area with a gravel floor and it is leaking out. The owner of the property is the federal government bureau of reclamation and they have said either the county cleans it up or the bureau will do it at twice the cost and charge the county back. As a result, they came before the committee and received the grant after they added their \$20,000 as a cost share.

**{Tape : 3; Side : A}**

**REP. WITT** asked if DEQ would get involved in that cleanup if the \$218,000 were eliminated. **John Tubbs** said the Cascade County government would have that responsibility. The weed shop had gone to them before trying to address this issue. This grant was very important to remove them from the liability.

**Closing by Sponsor:**

**REP. MCCANN** said that in light of Cascade County's problem, the projects left unfunded were not the imperative type project that it was. The unfunded projects could wait until the next biennium without anyone getting hurt.

**EXECUTIVE ACTION ON HB 572**

**REP. LEWIS** said **John Tubbs** had a spread sheet indicating how much RIT (Resource Indemnity Trust) they had to spend and where it was. There are several bills in the House and another in the Senate that we don't have enough backing on so we will need to know where the money is.

**John Tubbs** said the spread sheet, "RIT Changes in Distribution", **EXHIBIT (aph56a08)** is focused on the tax revenues being deposited that were historically RIT tax revenues. It shows the effects of HB 572 which in front of this committee, SB 322 which in front of finance and claims, and SB 484 which is in transition over to the House. The top information is current law and shows tax proceeds from two sources, the RIGWA oil and gas taxes and the metal mines taxes being deposited into four accounts: the trust fund, the



groundwater account at bureau of mines, the orphan share account which DEQ administers, and the arctic GP mineral grants which were a subject of HB 7. The information below that imposed each bill in order, showing the effect of the revenue distribution.

**REP. BALES'** bill, HB 572 funded the coal bed methane account at \$400,000 a year starting when the trust reached \$100 million in 2002. The allocation would take place July 1, 2003. It impacted the orphan share account and the RDGP mineral grants account by \$200,000 in revenue and that funded the coal bed methane account throughout a ten year period. **SEN. SHEA's** bill, SB 322 is similar. It took \$300,000, of which \$150,000 impacted orphan share with the other \$150,000 impacting RDGP mineral grants. That bill funded a natural resource worker education program to retrain laid off miners and timber industry workers. The third bill, **SEN. BECK's bill, SB 484** created a hard rock mining debt service account so they could sell bonds. The metalliferous mine tax allocation that was going to orphan share account and was dedicated. That is the \$689,672 that goes to \$667,250 in 2003. The last set shows the impact if this legislature passed all three bills and it just adds up the previous three sets. The second page shows the actual revenue going into the account as opposed to the change in revenue. The last sheet summarizes those two tax revenue sources, the RIGWA (Resource Indemnity Groudwater Assessment Tax) and Oil and Gas Taxes, and the Metal Mine Tax.

**REP. LEWIS** referred to the second page where it said current law plus all bills. Is that revenue? **John Tubbs** said that is tax revenue from RIGWA, oil and gas and metal mines. It does not include the interest earnings off the trust because those bills only address the tax revenue allocation. Page two shows what actually gets deposited into these accounts. Page one is the impacts. Page three is revenue, but it is all being spent. There is no money available.

**REP. MCCANN** asked about the \$400,000 per year on **REP. BALES'** bill. Is there a sunset where it stops? **John Tubbs** said at ten years out the revenue stream stops going into the account and at that point they can spend out of the account. **SEN. SHEA's** bill sunsets in five years. **SEN. BECK's** bill does not sunset because it is a bonding bill.

**REP. LINDEEN** said if all three bills passed, there would only be \$888,000 in orphan share account. What is happening currently? **John Tubbs** said the orphan share account is administered by DEQ. It is a remediation account for lesser level contamination sites that become state superfund sites and that triggers DEQ enforcement and regulation requirements. It could be a dry cleaner, an abandoned oil refinery or anything that had hazardous material on the site that was bad enough to warrant their action.



Before 1997 the person who owned it that was still in business and had money in their pockets was held jointly liable for the higher cost of clean up regardless of their responsibility associated with the contamination. Current legislation reads that as a responsible party you still have to clean it up, but you can initiate another process to allocate proportionately the liability associated with those persons responsible for it. The problem comes when the person associated with the business is no longer in business or is deceased. That is where the orphan share came from. It has built up a substantial balance and there isn't a lot of money being spent out of the account.

**REP. LEWIS** summarized. If we want to spend any more of this money on any other purpose, it had to come from one of these bills because there is no other money on the table. If this is added up, the revenues equal the bills we have before us now.

**John Tubbs** said current law revenues have been appropriated with the exception of the potential balance over \$100 million in the RIT that is not in there. We don't expect it to hit over \$100 million until 2002, so throughout 2002 the RIGWA proceeds and the oil and gas proceeds will continue to be deposited in the RIT trust fund until July 1, 2003 when it will be switched. As a result, \$1.1 million over the \$100 million that is protected by the constitution will be deposited into the RIT account. That is clearly appropriable by a simple majority in the House. These bills do not touch it. **REP. LEWIS** said **SEN. TAYLOR's** bill is coming to this committee on rewriting the weed trust, and weed funding. He had been working with a group to try to put more money into county weed control. That was why he had been trying to figure this chart out.

**REP. KAUFMANN** said under current law in 2003 the orphan share would get \$1.9 million. If all these bills pass, the orphan share will be \$1 million less than otherwise, so there is an impact. **John Tubbs** said no matter what you do on these bills, there is still going to be \$1 million in the RIT trust.

#### EXECUTIVE ACTION ON HB 7

Motion: **REP. MCCANN** moved that **HB 7 DO PASS AS AMENDED.**

Motion: **REP. MCCANN** moved that **AMENDMENT TO HB 7 BE ADOPTED.**

**REP. MCCANN** said Amendment HB000702, exhibit 6, was handed out earlier today, Amendment HB000701 is in the folders. The amendments addressed three projects from the prior biennium that were not started and completed. They moved \$900,000 to the upcoming biennium to fund projects that were of concern. Two of those projects were the Zortman Landusky reclamation projects.



In addition, the committee tried to identify with the plugging of oil wells around Glacier County, Pondera County and Liberty County. When there was a decent value for your product as there was currently, you see more participation in reclamation from these small companies. The committee tried to recognize that and send those dollars there. They moved money from board of oil and gas and redirected it into these three counties. He said both amendments are needed to fund the projects.

**Motion/Vote: REP. MCCANN moved that AMENDMENTS HB000701 AND HB000702 TO HB 7 BE ADOPTED. Motion carried unanimously.**

**Motion/Vote: REP. MCCANN moved that HB 7 DO PASS AS AMENDED. Motion carried unanimously.**



**ADJOURNMENT**

Adjournment: 11:45 A.M.

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REP. STEVE VICK, Chairman

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LINDA KEIM, Transcription Secretary

SV/PB/LK Transcribed by Linda Keim

**EXHIBIT** (aph56aad)